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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 159

SHERRILL O. and [redacted]ORIS M. WOODALL, and GLENN S. and MARGARET H. MILLS, *Petitioners*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The District Court wrote no opinion. Its findings of fact and conclusions of law (R. 10-16) are not officially reported. The opinion of the Court of Appeals (Pet. App. 1-5) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on May 6, 1958. The petition for a writ of certiorari was filed on July 8, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Whether an amount received by a newly hired employee in reimbursement of the costs of moving his home and family to the city of his new employment, paid by the employer pursuant to the terms of the employment contract, is includible in the employee's gross income under Section 22(a) of the Internal Revenue Code of 1939 or Section 61 of the Internal Revenue Code of 1954.

2. Whether the moving costs incurred by such new employee represent deductible business expenses under Section 23(a)(1) of the Internal Revenue Code of 1939 or Section 162 of the Internal Revenue Code of 1954, or whether such costs represent nondeductible personal expenses under Section 24(a)(1) of the Internal Revenue Code of 1939 or Section 262 of the Internal Revenue Code of 1954.

STATUTES AND REGULATIONS INVOLVED

Sections 22(a) and(n), 23(a)(1) and 24(a) of the Internal Revenue Code of 1939, Sections 61(a), 62, 162(a) and 262 of the Internal Revenue Code of 1954, and Sections 39.22(n)-1, 39.23(a)-2 and 39.23(a)-15 of Treasury Regulations 118, are set forth in the Appendix, *infra*, pp. 7-13.

STATEMENT

The relevant facts may be summarized as follows:

The Sandia Corporation was in need of professional engineers and other technically trained employees to work in Albuquerque, New Mexico. It conducted extensive recruiting programs in other areas and at various universities. As an inducement to accept employment, it offered to reimburse newly hired employees

for expenses which they incurred in moving to Albuquerque. This was in addition to the agreed salary. The allowance included the cost of moving 7,500 pounds of household goods, hotel and meals en route, and six cents a mile for automobile travel. (Pet. App. 2).

In April, 1954, while otherwise employed at Dallas, Texas, the taxpayer Woodall accepted employment with Sandia to be performed at Albuquerque. In the contract of employment Sandia agreed that Woodall would be reimbursed for certain expenses incurred in moving himself and his family from Dallas to Albuquerque. This reimbursement was conditioned upon Woodall's remaining in Sandia's employ for at least six months. Woodall moved to Albuquerque on June 13, 1954, incurring relocation expenses in the amount of $592.28, which Sandia paid to him shortly after his arrival. On June 14, 1954, he was placed on the company payroll. (Pet. App. 2; R. 20-21.)

During 1953 the taxpayer Mills, while an engineering student at the University of Kentucky, accepted employment with Sandia with the understanding that his relocation expenses would be paid in the same manner as those of Woodall. After his arrival in Albuquerque, Mills submitted a voucher for these expenses and was paid the sum of $446.67. (Pet. App. 2.)

Neither taxpayer reported the reimbursement as income in his income tax return. The Commissioner subsequently determined deficiencies against them, which they paid. Each taxpayer filed a claim for refund and then brought a refund action in the District Court. The District Court found in each case that the reimbursement was not includible in the taxpayer's gross income and that, even if it were, it was offset by

an equal amount deductible as an ordinary and necessary travel expense incurred in carrying on a trade or business. (Pet. App. 2-3.) The Court of Appeals reversed. (Pet. App. 3-5.)

ARGUMENT

1. Contrary to the taxpayers' assertion (Pet. 5-6), no important question requiring settlement by this Court is presented by the holding below that the reimbursement payments made by Sandia to the taxpayers are includible in their respective gross incomes under Section 22(a) of the 1939 Code (Appendix, *infra*, p. 7) and Section 61(a)(1) of the 1954 Code (Appendix, *infra*, p. 9).[1] That holding is in full accord with and applies decisions of this Court which have already settled the applicable principles. The Court has repeatedly stated that by the comprehensive statutory definition of gross income Congress intended "to tax all gains except those specifically exempted" (*Commissioner* v. *Glenshaw Glass Co.*, 348 U.S. 426, 429-430) and that this definition "is broad enough to include in taxable income any economic or financial benefit conferred on the employee as compensation, whatever the form or mode by which it is effected" (*Commissioner* v. *Smith*, 324 U.S. 177, 181, rehearing denied, 324 U.S. 695). See also, *Commissioner* v. *LoBue*, 351 U.S. 243, 246; *Gen. Investors Co.* v. *Commissioner*, 348 U.S. 434, 436. The payments made by Sandia to the taxpayers clearly conferred on each taxpayer a financial benefit which, just as clearly, was not a gift and therefore not exempt from tax under one of the enumerated exclusions from gross income (Section 22(b)(3) of the

[1] The payment to Mills took place in 1953 and is governed by the 1939 Code, while the payment to Woodall took place in 1954 and is subject to the 1954 Code.

1939 Code (26 U.S.C. 22(b)(3)) and Section 102 of the 1954 Code (26 U.S.C. 1952 ed., Supp. V, 102)). The payments, having been made pursuant to a contract of employment (R. 20, 26) and thus in discharge of a legal obligation, constituted taxable income rather than gifts.[2] *Robertson* v. *United States,* 343 U.S. 711, 713-714; *Commissioner* v. *LoBue, supra; Old Colony Tr. Co.* v. *Commissioner,* 279 U.S. 716, 729-730; *Commissioner* v. *Jacobson,* 336 U.S. 28, 51; *Helvering* v. *Amer. Dental Co.,* 318 U.S. 322, 330.

2. The taxpayers do not discuss that portion of the decision below which holds (Pet. App. 4-5) that the expenses of moving to a new place of employment are personal expenses, and therefore nondeductible under Section 24(a) of the 1939 Code (Appendix, *infra,* p. 8) and Section 262 of the 1954 Code (Appendix, *infra,* p. 10), rather than expenses of carrying on a trade or business away from home, for which a deduction is authorized by Section 23(a)(1)(A) of the 1939 Code (Appendix, *infra,* p. 8) and Section 162(a)(2) of the 1954 Code (Appendix, *infra,* p. 10). It is of course apparent that the taxpayers' expenditures in moving to Albuquerque were not incurred in carrying on a trade or business, a statutory prerequisite to deductibility, and therefore cannot meet the requirement that they be incurred in the prosecution of their employer's business. See *Commissioner* v. *Flowers,* 326 U.S. 465, 473, 474; *Ney* v. *United States,* 171 F. 2d 449 (C.A. 8th), certiorari denied, 336 U.S. 967; *Carragan* v. *Commissioner,* 197 F. 2d 246, 249-250 (C.A. 2d); *York* v. *Commissioner,*

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[2] One of Sandia's representatives testified (R. 32-33) that Sandia treated these reimbursement payments as part of the cost of procuring and training personnel.

160 F. 2d 385 (C.A. D.C.); *Barnhill* v. *Commissioner*, 148 F. 2d 913, 917 (C.A. 4th). The expenses were incurred in preparing for or obtaining employment and accordingly were personal expenses. See *McDonald* v. *Commissioner*, 323 U.S. 57, 60; *York* v. *Commissioner, supra; Mays* v. *Bowers*, 201 F. 2d 401 (C.A. 4th), certiorari denied, 345 U.S. 969; Treasury Regulations 118, Section 39.23(a)-15(f) (Appendix, *infra*, pp. 12-13); Rev. Rul. 55-140, 1955-1 Cum. Bull. 317.

The taxpayers make no mention of *Commissioner* v. *Peurifoy*, 254 F. 2d 483 (C.A. 4th), in which the Court granted certiorari on May 19, 1958 (356 U.S. 956). In that case (No. 46, October Term, 1958) the issue is the deductibility under Section 23(a)(1)(A) of the 1939 Code of expenditures made by construction workers for meals and lodging during their employment at a job site where they did not reside. Decision in the case, as argued and decided by the lower courts, turned upon whether the taxpayers were away from home within the meaning of the deduction statute. The case, we submit, is clearly distinguishable on its facts.

CONCLUSION

The decision below is correct. There is no conflict of decisions and no important question is involved. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Solicitor General.
Charles K. Rice,
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August, 1958.

APPENDIX

Internal Revenue Code of 1939:

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; * * *

* * * * *

(n) [As added by Sec. 8(a) of the Individual Income Tax Act of 1944, c. 210, 58 STAT. 231] *Definition of "Adjusted Gross Income."*—As used in this chapter the term "adjusted gross income" means the gross income minus—

(1) *Trade and business deductions.*—The deductions allowed by section 23 which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee;

(2) *Expenses of travel and lodging in connection with employment.*—The deductions allowed by section 23 which consist of expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee;

(3) *Reimbursed expenses in connection with employment.*—The deductions allowed by section 23 (other than expenses of travel, meals, and lodging while away from home) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of serv-

ices as an employee, under a reimbursement or other expense allowance arrangement with his employer;

* * * * *

(26 U.S.C. 22.)

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(a) [As amended by Sec. 121(a) of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Expenses.*—

(1) *Trade or business expenses.*—

(A) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; * * *

* * * * *

(26 U.S.C. 23.)

SEC. 24. ITEMS NOT DEDUCTIBLE.

(a) *General Rule.*—In computing net income no deduction shall in any case be allowed in respect of—

(1) [As amended by Sec. 127(b) Revenue Act of 1942, *supra*]. Personal, living, or family expenses, except extraordinary medical expenses deductible under section 23(x);

* * * * *

(26 U.S.C. 24.)

Internal Revenue Code of 1954:

SEC. 61. GROSS INCOME DEFINED.

(a) *General Definition.*—Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, and similar items;

* * * * *

(26 U.S.C. 1952 ed., Supp. V, 61(a).)

SEC. 62. ADJUSTED GROSS INCOME DEFINED.

For the purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

* * * * *

(2) *Trade and business deductions of employees.*—

(A) *Reimbursed Expenses.*—The deductions allowed by part VI (sec. 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer.

(B) *Expenses For Travel Away From Home.*—The deductions allowed by part VI (sec. 161 and following) which consist of expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee.

(C) *Transportation Expenses.*—The deductions allowed by part VI (sec. 161 and follow-

ing) which consist of expenses of transportation paid or incurred by the taxpayer in connection with the performance by him of services as an employee.

(D) *Outside Salesmen.*—The deductions allowed by part VI (sec. 161 and following) which are attributable to a trade or business carried on by the taxpayer, if such trade or business consists of the performance of services by the taxpayer as an employee and if such trade or business is to solicit, away from the employer's place of business, business for the employer.

* * * * *

(26 U.S.C. 1952 ed., Supp. V, 62.)

SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) *In General.*—There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business including—

(1) a reasonabl allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; * * *

* * * * *

(26 U.S.C. 1952 ed., Supp. V, 162(a).)

SEC. 262. PERSONAL, LIVING, AND FAMILY EXPENSES.

Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

(26 U.S.C. 1952 ed., Supp. V, 262.)

Treasury Regulations 118, promulgated under the Internal Revenue Code of 1939:

Sec. 39.22(n)-1. *Adjusted gross income.* (a) the term "adjusted gross income" means the gross income computed under section 22 minus such of the deductions allowable under section 23 as are specified in section 22(n). * * *

(b) Section 22(n) does not create any new deductions, but merely specifies which of the deductions provided in section 23 shall be allowed in computing adjusted gross income. The circumstance that a particular item is specified in one of the clauses under section 22(n) and is also embraced within the terms of another of such clauses does not permit the item to be twice deducted in computing adjusted gross income.

(c) The deductions specified in section 22(n) for the purpose of computing adjusted gross income are: (1) Deductions allowable under section 23, which are attributable to a trade or business carried on by the taxpayer not consisting of services performed as an employee; (2) deductions allowable by section 23 which constitute expenses of travel, meals, and lodging while away from home, paid of incurred by the taxpayer in connection with the performance by him of services as an employee; (3) deductions allowable by section 23 (other than expenses of travel, meals, and lodging while away from home) which consist of expenses paid or incurred in connection with the performance of services as an employee under a reimbursement or other expense-allowance arrangement with his employer; * * *

* * * * *

(e) Traveling expenses paid or incurred by an employee in connection with his employment while away from home which are deductible from gross

income in computing net income may be deducted from gross income in computing adjusted gross income. Among the items included in traveling expenses are charges for transportation of persons or baggage, expenditures for meals and lodging, and payments for the use of sample rooms for the display of goods. See § 39.23(a)-2.

(f) Expenses, other than traveling expenses, paid or incurred by an employee which are deductible from gross income in computing net income and for which he is reimbursed by the employer under an express agreement for reimbursement or pursuant to an expense allowance arrangement may also be deducted from gross income in computing adjusted gross income.

Sec. 39.23(a)-2. *Traveling expenses.* (a) Traveling expenses, as ordinarily understood, include railroad fares and meals and lodging. If the trip is undertaken for other than business purposes, the railroad fares are personal expenses and the meals and lodging are living expenses. If the trip is solely on business, the reasonable and necessary traveling expenses, including railroad fares, meals, and lodging, are business expenses.

(b) If, then, an individual, whose business requires him to travel, receives a salary as full compensation for his services, without reimbursement for traveling expenses, or is employed on a commission basis with no expense allowance, his traveling expenses, including the entire amount expended for meals and lodging, are deductible from gross income.

(c) If an individual receives a salary and is also paid his actual traveling expenses, he shall include in gross income the amount so repaid and may deduct such expenses.

(d) If an individual receives a salary and also an allowance for meals and lodging, as, for example, a per diem allowance in lieu of subsistence, the amount of the allowance should be included in gross income and the cost of such meals and lodging may be deducted therefrom.

* * * * *

(f) Only such expenses as are reasonable and necessary in the conduct of the business and directly attributable to it may be deducted.

* * * * *

(i) Commuters' fares are not considered as business expenses and are not deductible.

Sec. 39.23(a)-15. *Nontrade or nonbusiness expenses.* * * *

* * * * *

(f) Among expenditures not allowable under section 23(a)(2) are the following: Commuter's expenses; expenses of taking special courses or training; expenses for improving personal appearance; the cost of rental of a safe-deposit box for storing jewelry and other personal effects; and expenses such as expenses in seeking employment or in placing oneself in a position to begin rendering personal services for compensation, campaign expenses of a candidate for public office, bar examination fees and other expenses incurred in securing admission to the bar, and corresponding fees and expenses incurred by physicians, dentists, accountants, and other taxpayers for securing the right to practice their respective professions.

* * * * *

Sections 1.62-1(a), (b), (c), (e) and (f), 1.162-2, and 1.212-1(f) of Treasury Regulations on Income Tax under the Internal Revenue Code of 1954 contain comparable provisions.

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